

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GERALD S. PAUL

Appeal No. 2003-0399
Application No. 08/774,150

ON BRIEF

Before COHEN, FRANKFORT, and BAHR, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 9 through 14, all of the claims remaining in this application. Claims 1 through 8 and 15 through 19 have been canceled.

As noted on page 1 of the specification, appellant's invention generally relates to articulated medical beds for use in the long term care and home care markets. More particularly,

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the invention provides an articulated medical bed (10) including an articulated, variable length support frame (16) which is adjustable by a single actuator (156) activated by a control stick (304) mounted to a side rail (200) of the bed. Independent claim 9 is representative of the subject matter on appeal and a copy of that claim can be found in Appendix I of appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Stanley et al.	3,414,913	Dec. 10, 1968
(Stanley)		
Johnston	4,376,317	Mar. 15, 1983

Claims 9 through 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stanley in view of Johnston.

Rather than reiterate the examiner's full commentary regarding the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellant regarding the rejection, we make reference to the final rejection (Paper No. 6, mailed May 5, 1998) and the examiner's answer (Paper No. 18, mailed September 4, 2002) for the reasoning in support of the

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rejection, and to appellant's brief (Paper No. 14, filed September 18, 1998) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination which follows.

In rejecting claims 9 through 14 under 35 U.S.C. § 103(a) on the basis of the collective teachings of Stanley and Johnston, it is the examiner's position (final rejection, pages 4-5) that Stanley discloses an articulated medical bed like that defined in the claims on appeal, including

a control means (109, 128, 129) for operation by a person supported on said support frame, said control means comprising a control stick 109 comprising an elongated rod which is movable in a first direction to actuate said actuator for moving said upper body section upwardly and said control stick is movable in a second direction to actuate said actuator for moving said upper body section downwardly.

What the examiner finds lacking in Stanley is that the bed therein has no "side rail" like that defined in appellant's claim 9. To account for this difference the examiner turns to Johnston, urging that this patent discloses a side rail (9) constructed in the manner required in claim 9 on appeal and including a control means comprising "a control stick supported on at least one of said vertical and horizontal rail members within the side rail plane wherein movement of said control stick controls operation of said actuator [sic]" (final rejection, page 5).

From the combined teachings of Stanley and Johnston, the examiner concludes that it would have been obvious, presumably to one of ordinary skill in the art at the time of appellant's invention, "to connect the side rail taught [sic] as taught by Johnston with the actuator and control means of Stanley in order to prevent the patient from falling out of the bed while the bed is articulated" (final rejection, page 5).

We understand the examiner's rejection to result in the bed of Stanley (e.g., Fig. 1) being provided with a side rail like that seen at (9) in Johnston and with the control means (e.g.,

109, 128) of Stanley's bed being supported on at least one of the vertical and horizontal rail members of the side rail.

Having reviewed and evaluated the applied prior art references, we share appellant's assessment of the rejection on appeal and agree with appellant that neither Stanley nor Johnston discloses, teaches or suggests a "control stick" like that recited in claim 9 on appeal, wherein the control stick is supported on at least one of said vertical and horizontal rail members of the side rail and wherein "movement of said control stick actuates said actuator" (emphasis added) for actuating the support frame in articulated movement. Even if the control means (109, 128) of Stanley were supported on a side frame (9) like that seen on the bed of Johnston as the examiner has set forth in the rejection, we do not see that appellant's claimed subject matter would be the result.

More particularly, we note that the levers (109) of Stanley, identified by the examiner as corresponding to the "control stick" of appellant's claims, are described in that patent as being "manually operable selector levers . . . for selective operation to position the rod 97" (col. 7, lines 28-32).

Positioning of the rod (97), seen in Figures 4, 7 and 10 of Stanley, determines whether subsequent operation of the electric motor (91) on the bed will rotate the high-low shaft (31), the knee screw shaft (57), or the head screw shaft (67). Note particularly the disclosure of Stanley at column 7, lines 32-58.

Thus, the levers (109) of Stanley merely act as "selector levers" for displacing rod (97) and determining which one of selector gears (93, 94, 95) seen in Figure 7 will be operative when the motor (91) is subsequently energized. As urged by appellant in the brief (page 5), it follows from this understanding of the operation of the levers (109) that movement of levers (109) does not actuate said actuator of the bed for actuating the support frame in articulated movement, as required in claim 9 on appeal. Energization of the electric motor (91) in Stanley is controlled by one or the other of the two micro switches (115, 116), which switches are caused to operate by movement of remote control means in the form of manually operable slides (128, 129) working through Bowden cables (126, 127) to move switch bars (122, 123). See column 7, line 59 thru column 8, line 71 and Figures 1, 2, 4-7 and 10 of Stanley.

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Since we have determined that the teachings and suggestions which would have been fairly derived from a collective consideration of Stanley and Johnston would not have made the subject matter as a whole of claims 9 through 14 on appeal obvious to one of ordinary skill in the art at the time of appellant's invention, we must refuse to sustain the examiner's rejection of those claims under 35 U.S.C. § 103(a).

In light of the foregoing, the decision of the examiner to reject claims 9 through 14 under 35 U.S.C. § 103(a) is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
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